IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 28TH SEPTEMBER 2006 / 6TH ASWINA 1928

MFA.No. 808 of 1994(E)

(AWARD DATED 29-1-1994 IN O.P.(MV)NO.3104/1990 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR)

APPELLANTS/PETITIONERS:

1. SKARIA S/O. JOSEPH, KALLOOR HOUSE, MUTHIRAPUZHA, KONNATHADY, IDUKKI.
2. ROSAMMA SKARIA, W/O. SKARIA, -DO- -DO-.
3. RAJI SKARIA, S/O. SKARIA (MINOR), REPRESENTED BY IST PETITIONER.

BY ADV. SRI.G.JANARDHANA KURUP & JOHN K. GEORGE.

RESPONDENTS/RESPONDENTS:

1. SHYEEN, S/O. MANI, KUNNATHUKUDIYIL VEEDU, HOSTEL JUNCTION, MUVATTUPUZHA.
2. P.K.NARAYANAN NAIR, MARANGATTUPUTHENPURAYIL VEEDU, RANDAR KARA, MUVATTUPUZHA (DIED)
3. M/S.THE UNITED INDIA INSURANCE COMPANY LIMITED, MUVATTUPUZHA.

ADDL. RESPONDENTS:

4. SMT. RAJAMMA, W/O. LATE P.K.NARAYANAN NAIR, MARANGATTUPUTHENPURAYIL VEEDU, RANDAR KARA, MUVATTUPUZHA.
5. SRI. KRISHNAN NAIR @ APPU, S/O. P.K.NARAYANAN NAIR, DO. DO.
6. SMT. OMANA, D/O. LATE DO. DO.

7. SMT. THANKAM, D/O. LATE DO. DO.

8. MANI, D/O. LATE DO. DO.

(ADDITIONAL RESPONDENTS 4 TO 8 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF DECEASED 2ND RESPONDENT AS PER ORDER DT.2-8-2006 IN I.A.NO.115/2003.)

R3 BY ADV. SRI.M.S.PATTALI
SMT.JESSY GEORGE
R4 TO R8 BY ADV.SRI.A.A.ABUL HASSAN
SMT.MINI.V.A.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/09/2006, THE COURT ON 28/09/2006 DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A.No. 808 of 1994

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Dated this the 28th day of September, 2006.

JUDGMENT

The appellants are the petitioners in O.P.(MV) No.3104/1990, an application seeking compensation on account of the death of the son of claimants 1 and 2, who was then aged 22 years. The third claimant is a brother of the deceased. He was then a minor. O.P. (MV)No.1666/1990 was filed by one Kalyani seeking compensation, owing to the same accident. In that case, the owner filed a written statement admitting the accident but contending that it happened not out of any rash and negligent driving by the first respondent. He also challenged the quantum of compensation claimed. It was further urged that if any compensation is found due, the insurer is liable to pay. He did not, however, file any written statement in opposition to O.P(MV)No.3104/1990 from which this appeal arises.

2. The Tribunal jointly tried both the claim petitions and passed an award in favour of the claimant in O.P.(MV)No.1666/1990. It, however, dismissed O.P.(MV)No.3104/1990 on the ground that it was belated. During the pendency of this appeal, the law governing the period of limitation for the application for compensation has taken care for the situation and O.P.(MV)No.3104/1990 is evidently not out of time.

3. During the pendency of this appeal, the appellants-claimants applied for impleadment of the legal representatives of the second respondent-owner on the ground that he is no more. The persons, who were notified as the legal representatives, entered appearance and contended that the first respondent-owner died on 24-2-1993 even before the claim petition was decided by the Tribunal on 29-1-1994 after vehement arguments were heard on 19-1-1994. It was, therefore, pointed out that their impleadment in the appeal cannot be made. It was also contended by them that the late second respondent owner had transferred the vehicle on 29-9-1987 before the accident on 1-3-1988.

4. On 2nd August, 2006, the applications to condone delay in applying to set aside abatement; to set aside abatement and to implead the legal representatives were allowed leaving the impleaded respondents with opportunity to urge all such contentions at the final hearing of this appeal.

5. I have heard the learned counsel for the parties.

6. The deceased owner of the vehicle, who was the second respondent in both the claim petitions before the Tribunal, did not contest O.P.(MV)No.3104/1990 from which this appeal arises by entering appearance and filing pleadings in opposition to that claim petition and he was consequently declared ex parte. He, however, entered appearance in O.P.(MV)No.1666/1990, jointly tried and disposed of with the case in hand. In that case, as already noticed, his contention was an admission as to the accident; a challenge to the quantum of compensation claimed; an assertion that the insurer is liable to satisfy the award and still

further, that the driver of the vehicle who stood ex parte the proceedings was not rash and negligent in driving the vehicle. On the face of the said contentions, it has to be immediately noticed that it was not part of his contentions in opposition to the claim petition that he had transferred the vehicle prior to the accident as is now attempted to be urged by his legal representatives. Even if I were to treat that the impugned award was void for non-impleadment of the legal representatives of the deceased-owner before the Tribunal and to regulate the parties for a trial denovo, the legal representatives cannot contradict or misprove the pleadings already placed on record by the deceased-owner, at any rate, by projecting a case whereby the owner could plead absence of liability on account of transfer of the vehicle prior to the accident. This is so because, the written statement of the owner was already on record in O.P.(MV)No.1666/1990 without disputing the ownership of the vehicle at the time of the accident.

7. Under such circumstances, I deem it

inappropriate, at this distance of time, to remand a claim petition filed in the year 1990 in relation to an accident that took place on 1-3-1988, that too, a petition relating to a case of death in which total compensation is Rs.50,000/-.

8. Having regard to the nature of findings entered by the Tribunal on the question of negligence in the backdrop of the undisputed question as to ownership, going by the written statement of the owner in O.P.(MV)No.1666/1990 and in view of the fact that the driver remained ex parte, I do not find any reason to deviate from the said finding, principles akin to res judicata, though, if not, that legal principles in their full of force advise me to adopt this approach in this appeal in so far as the issues relating to liability and negligence are concerned. The Tribunal having found valid insurance, the insurer will be liable to satisfy the award, if any, that would be passed in O.P.(MV)No.3104/1990 from which this appeal arises, of course, to the limit of Rs.50,000/- since the deceased was a passenger in the vehicle.

9. Added on to the question of quantum of compensation to be granted as already noticed, the deceased was a male aged 22 years at the time of the accident. The third claimant, his younger brother gave evidence as P.W.1. He stated that the deceased was an earning member supporting the family. Claimants 1 and 2 are the parents. Going by the materials on record, they were in their early 40s at the time when they lost their son. Taking into consideration the contribution that the deceased would have made to the family, the loss of love and affection that the parents and the brother suffered, owing to the death of the deceased and the other attendant factors, an amount of Rs.50,000/- as claimed in the claim petition is fixed as compensation. The same will carry interest at the rate of 8% per annum from the date of the petition till date of realisation. Rs.15,000/- out of the compensation amount with interest at the aforesaid rate will be paid by the insurer and the remaining will be due to the claimants from the estate of the late second respondent-owner of the vehicle. It is clarified that this judgment does not decide on the issue as to

whether the impleaded legal representatives of the deceased second respondent have inherited any of the assets of the said person and are liable as holders of the estate of the late second respondent. Such issue is left open to be decided by such authority, if and when arises. The amount to be paid by the insurer as aforesaid will be released within three months from today. The appeal is allowed with proportionate costs to be suffered in the same ratio as aforesaid as regards compensation.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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M.F.A.808 of 1994

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JUDGMENT

Dated: 28th September, 2006.